

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

CALVIN NEWSOME

VS.

CIVIL ACTION NO. 2:15cv168-KS-MTP

BAKER HUGHES, INC.

ORDER

This cause came on this date to be heard on Report and Recommendation of the United States Magistrate Judge Michael T. Parker entered herein on June 13, 2016 [6]. On July 5, 2016, Plaintiff filed an Objection [7] to the Report and Recommendation and in the Objection Plaintiff states, “Plaintiff has filed a motion for enlargement of time to serve complaint and summons and now knows too (sic) that he is personally responsible for having the complaint and summons served upon the registered agent for service of process and can have the same served forthwith.” [7-1].

On the same day, July 5, 2016, Plaintiff filed a Motion for Extension of Time to Serve Process [8] and requested thirty (30) additional days to serve process. Apparently, since the filing of said Objection and Motion, Plaintiff has done nothing, and certainly has not properly served the Defendant. He has had thirty-six (36) days since he filed his Motion for Enlargement of Time to Serve Summons, and has not done so. The Complaint was filed December 31, 2015 and we are almost seven and one-half (7 ½) months post filing. The Plaintiff has been warned and he has been given opportunities and he has acknowledged his responsibility to serve the summons. This Court must address its docket and move cases along. There just comes a time when inaction by a plaintiff to properly serve the summons must be addressed. Rule 4(m) clearly states,

If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own motion after notice to the plaintiff - **must** (*emphasis added*) dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. F.R.C.P. Rule 4(m).

The summons has not been served within the 120 days. The Plaintiff has been put on notice and given deadlines and Plaintiff has shown no good cause for the failure. Therefore, the Court finds that the Report and Recommendation of U.S. Magistrate Judge Michael T. Parker be and the same is hereby adopted as the finding of this Court. Additionally, the Court finds that the Objection [7] and Motion for Extension of Time [8] are not well-taken and should be **denied** and the Complaint filed herein should be and hereby is, **dismissed without prejudice**.

SO ORDERED on this the 10th day of August, 2016.

s/Keith Starrett
UNITED STATES DISTRICT JUDGE